

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL THREET,

Plaintiff,

Civil Action No. 14-cv-13345

vs.

HON. BERNARD A. FRIEDMAN

D. PHILLIPS, et al.,

Defendants.

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**ORDER GRANTING PLAINTIFF'S MOTIONS FOR
LEAVE TO FILE AN AMENDED COMPLAINT**

and

**ORDER REJECTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION AS MOOT**

This matter is presently before the Court on defendants' motion for summary judgment [docket entry 21] and plaintiff's motions for leave to file an amended complaint [docket entries 27 & 31].

Plaintiff seeks leave to file an amended complaint to "correct errors in his research, writing, and calculations." Pl.'s Mot. Defendants have not responded to these motions and the time for them to do so has expired. As leave to amend must be freely granted, *see, e.g., Shell v. Marks Oil Co.*, 830 F.2d 68 (6th Cir. 1987), and defendants apparently do not oppose it, the Court shall grant plaintiff's motions and deem the proposed amended complaint [docket entry 30] to be filed as of the date of this order.

As to defendants' motion for summary judgment, Magistrate Judge R. Steven Whalen has submitted a Report and Recommendation ("R&R") in which he recommends that defendants' motion, which he construes as an unenumerated motion under Fed. R. Civ. P. 12, be denied. Neither

party has objected to the R&R and the objection period has expired.

The Court agrees with the magistrate judge's application of *Boyd v. Corrs. Corp. of Am.*, 380 F.3d 989, 994 (6th Cir. 2006), to refute defendants' argument that plaintiff failed to properly exhaust his administrative remedies because he filed his complaint before receiving a Step III grievance response. However, defendants' motion relates to a complaint that has now been superseded by an amended complaint. The Court therefore rejects the R&R on the basis that the underlying motion is moot.

SO ORDERED.

s/ Bernard A. Friedman
BERNARD A. FRIEDMAN
SENIOR UNITED STATES DISTRICT JUDGE

Dated: May 22, 2015
Detroit, Michigan